

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID ARTHUR BROWAND,

Petitioner,

v.

GENA JONES, Warden,¹

Respondent.

No. 2:21-cv-00184-DAD-EFB (HC)

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner is a state prisoner without counsel seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Respondent has moved to dismiss petitioner's third amended petition (ECF No. 32)² on the ground that claims one, two, and three are untimely. ECF No. 34. Although petitioner opposes dismissal of the third amended petition, he concedes that claims one, two, and three are untimely, and requests that the court dismiss those claims, and proceed on the remaining timely claims for relief. ECF No. 36. Respondent does not object to this approach. ECF No. 37.

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¹ Petitioner named the California Department of Corrections and Rehabilitation as respondent. ECF No. 1. Petitioner is incarcerated at California Health Care Facility, where Gena Jones is the Warden. *Id.* Accordingly, Gena Jones is substituted as respondent in this matter.

² Although the docket describes this filing as petitioner's first amended petition (ECF No. 32), it is petitioner's third amended petition. Petitioner's previous petitions are docketed at ECF Nos. 1, 21, and 23.


Accordingly, it is ORDERED that the Clerk of the Court shall substitute Gena Jones as respondent and shall redesignate ECF No. 32 as the “Third Amended Petition.”

Further, it is RECOMMENDED that:

1. Respondent’s motion to dismiss (ECF No. 34) be granted to the extent that grounds one, two, and three of petitioner’s third amended petition (ECF No. 32) be DISMISSED as untimely and this action proceed on claims four and five;
2. Respondent be directed to file and serve an answer to claims four and five of petitioner’s third amended petition within 60 days from the date of any order adopting these findings and recommendations. Any response shall be accompanied by any and all transcripts or other documents relevant to the determination of the issues presented in the application. *See* Rules 4, 5, Rules Governing § 2254 Cases; and
3. Petitioner’s reply, if any, shall be filed and served within 30 days of service of an answer.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the specified time may waive the right to appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: May 25, 2023.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE